



FH  
[REDACTED]

**STATE OF WISCONSIN**  
**Division of Hearings and Appeals**

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

CCB/169879

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**PRELIMINARY RECITALS**

Pursuant to a petition filed November 03, 2015, under Wis. Admin. Code § HA 3.03(4), to review a decision by the Eau Claire County Department of Human Services in regard to Child Care, a hearing was held on December 15, 2015, at Eau Claire, Wisconsin.

The issue for determination is whether the county agency must make additional payments retroactively to the petitioner's childcare provider for care the provider billed to the petitioner but did not provide to her child.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

I

Respondent:

Department of Children and Families  
201 East Washington Avenue, Room G200  
Madison, Wisconsin 53703

By: [REDACTED]  
Eau Claire County Department of Human Services  
721 Oxford Avenue  
PO Box 840  
Eau Claire, WI 54702-0840

**ADMINISTRATIVE LAW JUDGE:**

Michael D. O'Brien  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. The petitioner (CARES # [REDACTED]) is a resident of Eau Claire County.

2. The county agency notified the petitioner on September 28, 2015, that her childcare authorization was ending. The notice indicated that the Wisconsin Shares program was subsidizing her childcare provider up to \$185.98 per week for up to 34 hours of care a week from July 26, 2015, through September 5, 2015. It also indicated that the type of authorization was attendance based and explained what that means under the heading *Authorization Details*: “A (Attendance): Your provider will be paid an hourly amount for hours actually attended up the Maximum Weekly WI Shares Payment listed in the Authorization information box above.” The notice also explained: “The **Max Weekly WI Shares Payment** is the maximum amount Wisconsin Shares will pay. This amount will be adjusted based on ... your child’s attendance.” [emphasis in original]
3. The county agency notified the petitioner on October 26, 2015, that her childcare authorization was ending. It indicated that the Wisconsin Shares program was subsidizing her childcare provider up to \$185.98 per week for up to 34 hours of care a week from July 26, 2015, through September 5, 2015. It also indicated that the type of authorization was attendance based and explained what that mean under the following under heading *Authorization Details*: “A (Attendance): Your provider will be paid an hourly amount for hours actually attended up the Maximum Weekly WI Shares Payment listed in the Authorization information box above.” The notice also explained: “The **Max Weekly WI Shares Payment** is the maximum amount Wisconsin Shares will pay. This amount will be adjusted based on ... your child’s attendance.” [emphasis in original]
4. The petitioner has been unable to work because of an injury since August 28, 2015.
5. The county agency has not subsidized the petitioner’s childcare provider for hours the petitioner’s child did not attend the daycare.
6. The petitioner’s childcare provider has continued to charge the petitioner a regular rate regardless of the number of hours her child has attended.
7. The petitioner now has an unpaid childcare bill exceeding \$1,300. She requests that the county agency pay this bill.

### DISCUSSION

Child Care Benefits subsidize child care costs for W-2 participants who are working in unsubsidized employment or various approved programs. Wis. Stat. § 49.155(1m)(a). Childcare authorizations are either attendance based or enrollment based. *Wisconsin Shares Child Care Subsidy Policy Manual*, § 2.2.9. According to the *Manual*, § 2.2.9.1., “Attendance-based authorizations reimburse the child care provider on an hourly basis for only the hours of the child’s reported attendance in a given week, up to the maximum number of hours authorized by the child care administrative agency.” Enrollment-based authorizations, on the other hand, “reimburse the child care provider a weekly amount for a set number of hours per week.” *Id.*, § 2.2.9.2.

The petitioner had been receiving authorization for up to 34 hours of care and \$185.98 in reimbursement per week since late July 2015. She fractured her neck and has not been able to work as a bus driver, her usual job, since August 28, 2015. Except for a few hours a week when she received medical care, her child has not been in daycare since then. The agency contends that the petitioner receives attendance-based benefits. Because her child was not in daycare, the agency stopped subsidizing her provider, although it did later allow between two and five hours a week for her medical appointments. But her daycare provider continued to charge her a set amount regardless of the number of hours her child actually attended. The petitioner now has a bill that exceeds \$1,300. She contends that the program must pay it because it did not give her proper notice before changing her benefits.

I disagree because the notice reducing the maximum amount of benefits she could receive did not affect how many hours of care the agency subsidized. Although the agency did not provide the original notice it

sent out after she was found eligible in July 2015, the evidence is that her benefits were attendance based from the beginning. First, unless the child has certain special needs, child care policy requires all authorizations to certified child care and licensed family child care providers to be attendance based. *Id.*, § 2.2.9.1. There is no evidence that the petitioner's child has special needs. Therefore, if the agency allowed an enrollment-based authorization, it violated its own policy. Also, the September 26, 2015, notice, sent to inform the petitioner that her then current authorization was ending indicated that she had been receiving an attendance-based authorization. I assume that this notice correctly reiterated the type of authorization that was mentioned in the original notice.

That notice also contained standard language concerning attendance-based childcare authorizations; this language was undoubtedly found in the original notice. Under the heading "Authorization Details," the notices state: "A (Attendance): Your provider will be paid an hourly amount for hours actually attended up the Maximum Weekly WI Shares Payment listed in the Authorization information box above." The notice would also explain: "The **Max Weekly WI Shares Payment** is the maximum amount Wisconsin Shares will pay. This amount will be adjusted based on ... your child's attendance." [emphasis in original] This indicates that the petitioner was told that the agency would not subsidize childcare costs times when her child was not receiving care.

It is true that the agency did not notify the petitioner until October 26, 2015, that the maximum amount of care for which she could be subsidized would drop to five hours a week. Although this occurred two months after the number of childcare hours that were subsidized fell, it does not change the fact that regardless of the maximum number of hours she was entitled to, her provider could not be reimbursed for more hours than her child actually attended. Because the petitioner could only receive subsidies for the hours her child attended, and her child's attendance fell after she was injured in August 2015, the timing of the notices had no effect on the amount of subsidy she received. Indeed, the only way a late notice could affect ongoing childcare benefits would be if the care received began exceeding the maximum amount allowed under the authorization in effect at the time.

The petitioner's complaint that her provider continued to charge her a set amount for childcare after her child began receiving little or no care each week is not something I can consider because it involves a dispute between her and her provider. I have authority to consider only whether the county agency acted properly. It acted properly if based the petitioner's childcare subsidy on the number of hours her child actually received daycare services. No one disputes that it did. Therefore, I must uphold its decision not to provide retroactive benefits to the petitioner.

I note to the petitioner that if she wishes to challenge her childcare bill, she must bring an action against her provider in circuit court because the Division of Hearings and Appeals has no authority to consider this type of action. I do not know whether she would prevail in such an action because I do not know the law and facts of that situation. Moreover, even if I did know these factors, it would be improper for me to give this advice on such a matter to the petitioner.

### **CONCLUSIONS OF LAW**

The petitioner is only entitled to childcare subsidies during times her child was actually receiving childcare.

**THEREFORE, it is**

**ORDERED**

The petitioner's appeal is dismissed.

**REQUEST FOR A REHEARING**

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

## **APPEAL TO COURT**

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Children and Families, 201 East Washington Avenue, Room G200, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,  
Wisconsin, this 2nd day of February, 2016

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\sMichael D. O'Brien  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

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The preceding decision was sent to the following parties on February 2, 2016.

Eau Claire County Department of Human Services  
Child Care Benefits